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In the Supreme Court of the United States

OCTOBER TERM, 1995

UNITED FOOD AND COMMERCIAL WORKERS UNION LOCAL 751, PETITIONER

v.

BROWN GROUP, INC., D/B/A BROWN SHOE COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

The Worker Adjustment and Retraining Notification Act, 29 U.S.C. 2101 *et seq.*, requires covered employers to give an employee union advance notice of a plant closing or mass layoff, and expressly authorizes suits in federal court by unions to obtain monetary relief on behalf of their members for violations of the Act. The question presented is whether a union has standing under Article III of the United States Constitution to bring such a suit.

TABLE OF CONTENTS

	Page
Interest of the United States	1
Statement	2
Summary of argument	8
Argument:	
A union representing employees affected by a violation of the WARN Act has standing to sue the employer to recover back pay and benefits on behalf of the employees	10
A. Petitioner has direct standing in its own right to sue respondent under the WARN Act	11
B. Petitioner's WARN Act claim is consistent with traditional forms of representational litigation	22
C. Petitioner has associational standing to sue respondent under the WARN Act	24
Conclusion	30

TABLE OF AUTHORITIES

Cases:

Air Line Pilots v. *O'Neill*, 494 U.S. 65 (1991)	23
Allen v. *Wright*, 468 U.S. 737 (1984)	6, 11, 17, 22
Anderson v. *Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946)	27
Baker v. *Carr*, 369 U.S. 186 (1962)	26
Breininger v. *Sheet Metal Workers*, 493 U.S. 67 (1989)	23
Director, Office of Workers' Compensation v. *Newport News Shipbuilding & Dry Dock Co.*, 115 S. Ct. 1278 (1995)	28
Duke Power Co. v. *Carolina Environmental Study Group*, 438 U.S. 59 (1978)	26
First National Maintenance Corp. v. *NLRB*, 452 U.S. 666 (1981)	16, 17, 25
Flast v. *Cohen*, 392 U.S. 83 (1968)	22

Cases—Continued: Page

Gladstone, Realtors v. *Village of Bellwood*, 441 U.S. 91 (1979) 11, 12, 14, 26
General Telephone Co. v. *Equal Employment Opportunity Commission*, 446 U.S. 318 (1980) 27, 28
Havens Realty Corp. v. *Coleman*, 455 U.S. 363 (1982) 12, 13, 17
Holden v. *Hardy*, 169 U.S. 366 (1898) 25
Hunt v. *Washington State Apple Advertising Commission*, 432 U.S. 333 (1977) 5, 24
International Union v. *Brock*, 477 U.S. 274 (1986) 14, 16, 24, 26, 29
International Union v. *Hoosier Cardinal Corp.*, 383 U.S. 696 (1966) 7, 20, 21, 23, 29
Laborers Health & Welfare Trust Fund v. *Advanced Lightweight Concrete Co.*, 484 U.S. 539 (1988) 19
Linda R.S. v. *Richard D.*, 410 U.S. 614 (1973) .. 6, 11-12
Lujan v. *Defenders of Wildlife*, 504 U.S. 555 (1992) 10, 14, 17, 18, 28
Muskrat v. *United States*, 219 U.S. 346 (1911) 18
NLRB v. *Gissel Packing Co.*, 395 U.S. 575 (1969) 3
North Star Steel Co. v. *Thomas*, 115 S. Ct. 1927 (1995) 2, 12, 19
Northeastern Fla. Chapter of Associated Gen. Contractors of Am. v. *City of Jacksonville*, 113 S. Ct. 2297 (1993) 6, 12
Pasadena City Bd. of Educ. v. *Spangler*, 427 U.S. 424 (1976) 28
Rostker v. *Goldberg*, 453 U.S. 57 (1981) 11
Sierra Club v. *Morton*, 405 U.S. 727 (1972) 12, 18
Simon v. *Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26 (1976) 24
Singleton v. *Wulff*, 428 U.S. 106 (1976) 25
Trafficante v. *Metropolitan Life Ins. Co.*, 409 U.S. 205 (1972) 12, 18
Vaca v. *Sipes*, 386 U.S. 171 (1967) 23, 29

Cases—Continued: Page

Valley Forge Christian College v. *Americans United for Separation of Church and State*, 454 U.S. 464 (1982) 22, 26
Walters v. *National Ass'n of Radiation Survivors*, 473 U.S. 305 (1985) 11
Warth v. *Seldin*, 422 U.S. 490 (1975) 4, 6, 11, 18, 24, 26
Whitmore v. *Arkansas*, 495 U.S. 149 (1990) 22

Constitution, statutes, regulations and rule:

U.S. Const. Art. III ..... *passim*
Black Lung Benefits Act, 30 U.S.C. 932(k) 27-28
Civil Rights Act of 1964, Tit. VII, 42 U.S.C. 2000e *et seq.* 27
42 U.S.C. 2000e-5(f)(1) 27
Fair Housing Act of 1968, 42 U.S.C. 3601 *et seq.*:
§ 804(d), 42 U.S.C. 3604(d) 13
§ 812(a), 42 U.S.C. 3612(a) (1982) 12-13
Fair Labor Standards Act of 1938, 29 U.S.C. 201 *et seq.* 26
29 U.S.C. 216 28
Job Training Partnership Act:
29 U.S.C. 1501 et *seq.* 15
29 U.S.C. 1651 *et seq.* 2
Labor Management Relations Act, 29 U.S.C. 141 *et seq.*:
§ 301, 29 U.S.C. 185 7
§ 301(b), 29 U.S.C. 185(b) 20
Longshore and Harbor Workers' Compensation Act:
33 U.S.C. 901 *et seq.* 28
33 U.S.C. 921(c) 28
National Labor Relations Act, 29 U.S.C. 151 *et seq.* ... 3, 22
§ 8(f), 29 U.S.C. 158(f) 3
§ 9(a), 29 U.S.C. 159(a) 3, 16
Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, 102 Stat. 1107 15
Railway Labor Act, 45 U.S.C. 152 3

Statutes, regulations and rule—Continued: Page

Worker Adjustment and Retraining Notification Act, 29 U.S.C. 2101 *et seq.* 1
29 U.S.C. 2101(a)(4) 3, 22
29 U.S.C. 2102 12
29 U.S.C. 2102(a) 2
29 U.S.C. 2102(a)(1) 3, 25
29 U.S.C. 2102(a)(2) 15, 16
29 U.S.C. 2104(a) 4
29 U.S.C. 2104(a)(1) 1, 3, 19
29 U.S.C. 2104(a)(1)(A) 3
29 U.S.C. 2104(a)(1)(B) 3
29 U.S.C. 2104(a)(3) 1, 4
29 U.S.C. 2104(a)(5) 3, 4, 7, 11
29 U.S.C. 2104(a)(6) 1, 4
29 U.S.C. 2104(b) 1, 3, 4
29 U.S.C. 2107(a) 2
20 C.F.R.:
Section 639.1(a) 16
Section 639.1(b) 2
Section 639.1(f) 2, 16
Fed. R. Civ. P. 23 27

Miscellaneous:

134 Cong. Rec. (1988):
p. 12,130 14
p. 15,514 ..... 15, 19
p. 15,518 ..... 15, 16
p. 15,779 16
pp. 15,782-15,784 16
p. 15,926 20
p. 15,928 ..... 15, 20
H.R. 3, 100th Cong., 1st Sess. (1987) 14, 15
H.R. Conf. Rep. No. 576, 100th Cong., 2d Sess. (1988) 14
Report of the Secretary of Labor's Task Force on Economic Adjustment and Worker Dislocation in a Competitive Society (Dec. 1986) 16
2 Restatement (Second) of Contracts (1981) 21
S. Rep. No. 62, 100th Cong., 1st Sess. (1987) 15, 16

Miscellaneous—Continued: Page

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INTEREST OF THE UNITED STATES

The Worker Adjustment and Retraining Notification (WARN) Act, 29 U.S.C. 2101 *et seq.*, requires covered employers to give employee unions 60 days' notice of a plant closing or mass layoff. The Act expressly authorizes federal suits by unions who represent aggrieved employees, and provides that back pay and benefits to such employees, the litigant's costs and attorney's fees, and (under certain circumstances) a civil penalty, "shall be the exclusive remedies for any violation." 29 U.S.C. 2104(b), 2104(a)(1), (3) and (6). This case presents the question whether a union seeking

to utilize the WARN Act's enforcement scheme in federal court has standing under Article III of the Constitution.

By holding that a union expressly authorized to sue under the WARN Act lacked standing to do so, the court of appeals effectively invalidated an important feature of the Act. The United States has an interest in the proper application of constitutional standing principles to the federal cause of action created by Congress through the WARN Act. In addition, the WARN Act grants the Secretary of Labor authority to "prescribe such regulations as may be necessary to carry out [the Act]," 29 U.S.C. 2107(a), and the Secretary has promulgated regulations that "establish basic definitions and rules for giving notice" under the Act. 20 C.F.R. 639.1(b). The WARN Act's notice provisions, moreover, are an important part of dislocated worker assistance programs for which the Department of Labor provides funding, standards, and assistance to the States. See Job Training Partnership Act, Tit. III, 29 U.S.C. 1651 *et seq.*; 20 C.F.R. 639.1(f). The Secretary therefore has a substantial interest in furthering the policies and purposes of the Act. The United States filed an amicus curiae brief in *North Star Steel Co.* v. *Thomas*, 115 S. Ct. 1927 (1995), which concerned the proper statute of limitations for suits filed under the WARN Act.

STATEMENT

1. The WARN Act prohibits covered employers, with exceptions not relevant here, from "order[ing] a plant closing or mass layoff until the end of a 60-day period after the employer serves written notice." 29 U.S.C. 2102(a). See generally *North Star Steel Co.* v. *Thomas*, 115 S. Ct. 1927, 1929 (1995). The Act requires that the employer serve notice "to each representative of the

affected employees * * * or, if there is no such representative at that time, to each affected employee." 29 U.S.C. 2102(a)(1). The Act defines "representative" as "an exclusive representative of employees within the meaning of section [9](a) or [8](f) of" the National Labor Relations Act (NLRA), 29 U.S.C. 151 *et seq.* See 29 U.S.C. 2101(a)(4).[1]

An employer who violates the Act's notice requirement "shall be liable to each aggrieved employee who suffers an employment loss as a result of such closing or layoff for * * * backpay for each day of violation," 29 U.S.C. 2104(a)(1)(A), as well as certain employment benefits, 29 U.S.C. 2104(a)(1)(B), for "the period of violation, up to a maximum of 60 days." 29 U.S.C. 2104(a)(1). The Act authorizes suits in district court by "[a] person seeking to enforce such liability, including a representative of employees," and further provides that the person "may sue either for such person or for other persons similarly situated, or both." 29 U.S.C. 2104(a)(5). Section 2104(b) of the Act provides that "[t]he remedies pro-

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[1] Section 9(a) of the NLRA provides in pertinent part:

> Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

29 U.S.C. 159(a). Pursuant to Section 9(a), unions may be selected through an election conducted by the National Labor Relations Board, by obtaining authorization cards signed by a majority of the employees within the unit, or by other methods that present "convincing evidence of majority support." *NLRB* v. *Gissel Packing Co.*, 395 U.S. 575, 596 (1969). The term "representative" under the WARN Act includes exclusive representatives under the Railway Labor Act, 45 U.S.C. 152. See 29 U.S.C. 2101(a)(4).

vided for in this section shall be the exclusive remedies for any violation of this chapter." 29 U.S.C. 2104(b).[2]

2. Petitioner is the exclusive representative of employees at a shoe manufacturing plant operated by respondent. Pet. App. 13a-14a; Compl. ¶ 5.[3] Petitioner brought suit pursuant to 2104(a)(5) of the Act, alleging that respondent failed to provide proper notice to it of the closing of respondent's Dixon, Missouri plant[4] and the consequent layoff of 277 employees represented by petitioner.[5] Compl. ¶¶ 6-7. Pursuant to Section 2104(a), petitioner sought back pay and fringe benefits for each aggrieved employee for each day of employment loss that the employee suffered before the expiration of the sixty-day notice period. Pet. App. 14a; Compl. ¶ 10a. Petitioner also sought to recover its costs and attorney's fees. Pet. App. 14a; Compl. ¶ 10b.

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[2] In addition to back pay and benefits, prevailing plaintiffs may recover costs and attorney's fees. 29 U.S.C. 2104(a)(6). An employer who fails to give the requisite WARN Act notice to an affected unit of local government "shall be subject to a civil penalty of not more than $500 for each day of such violation." 29 U.S.C. 2104(a)(3). A local government aggrieved under that provision may bring an action in district court to recover the civil penalty. 29 U.S.C. 2104(a)(5).

[3] The district court's decision was rendered on respondent's motion to dismiss. The court was therefore required to accept all well-pleaded allegations in the complaint as true. See *Warth* v. *Seldin*, 422 U.S. 490, 501 (1975). This statement of the facts reflects that procedural posture.

[4] Petitioner alleged that a January 17, 1992 letter stating that respondent's plant would be closed beginning on March 20, 1992, was improperly mailed to an employee of the international union, and that, even if the notice was legally adequate, employees represented by petitioner were discharged before the sixty-day statutory period had elapsed. Pet. App. 2a; Compl. ¶¶ 7-9.

[5] Petitioner attached to its complaint, *inter alia*, a copy of its collective bargaining agreement with respondent and a list naming each of the 277 affected employees. Compl. App. A, C.

3. The district court dismissed the action on the ground that petitioner lacked standing to sue for back pay and benefits for the affected employees. The court acknowledged that the WARN Act expressly authorizes such suits, but held that petitioner had failed to demonstrate the minimum requirements for standing under Article III of the Constitution. Pet. App. 14a.

Stating that petitioner "has not alleged any injury to itself" (Pet. App. 14a), the court proceeded to consider the standing question solely in terms of whether the union could establish "associational" standing under the three-part test articulated by this Court in *Hunt* v. *Washington State Apple Advertising Commission*, 432 U.S. 333, 343 (1977). Under the *Hunt* test, the district court explained, an organization has standing to raise claims on behalf of its members if: (1) the organization's members would have standing to sue in their own right; (2) the interests the organization seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. Pet. App. 14a-15a (citing *Hunt*, 432 U.S. at 343). The court held that petitioner could not meet the third prong of the *Hunt* test because it sought only monetary relief on behalf of its members, and such claims would necessarily require the participation of individual members in the suit. Pet. App. 15a.[6]

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[6] The district court subsequently denied a motion to alter or amend the judgment, in which petitioner asked the court to accord it standing based on "the special nature of the relationship of a labor organization * * * and its members" or, alternatively, to grant petitioner 30 days in which to file an amended complaint seeking declaratory relief and adding affected individual employees as parties. Pet. App. 17a. The court declined to revisit its standing ruling, and denied petitioner's request for leave to amend its complaint. *Id.* at 18a-19a.

4. The court of appeals affirmed. Pet. App. 1a-12a. The court acknowledged that petitioner is an employee representative statutorily entitled to bring suit under the WARN Act. *Id.* at 4a. The court observed, however, that while "[a] federal statute may give a putative plaintiff the right to bring suit, thus relieving him of the judicially-created, prudential standing requirements, * * * the party seeking to have his claim heard nevertheless must comply with the Article III constitutional case or controversy requirements." *Id.* at 4a-5a (citations omitted).

The court first considered the union's direct standing to seek monetary relief under the WARN Act. In doing so, it analyzed whether petitioner had "alleg[ed] personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." Pet. App. 5a (quoting *Allen* v. *Wright*, 468 U.S. 737, 751 (1984)). The court concluded that petitioner had satisfied the first two requirements. With regard to the "injury" requirement, the court stated that the "gravamen" of petitioner's claim was the injury suffered by its members. *Id.* at 5a. Nonetheless, the court held that, construing the complaint liberally, it would "assume" that the complaint's allegation of failure to receive notice under the WARN Act alleged an injury to petitioner itself. *Id.* at 6a. The court reasoned, moreover, that because the "actual or threatened injury required by Art. III may exist solely by virtue of statutes creating legal rights," *ibid.* (quoting *Warth* v. *Seldin*, 422 U.S. 490, 500 (1975), quoting *Linda R.S.* v. *Richard D.*, 410 U.S. 614, 617 n.3 (1973)), petitioner "[a]rguably" had "alleged 'an invasion of a legally protected interest' that is concrete and actual." *Id.* at 6a (quoting *Northeastern Fla. Chapter of Associated Gen. Contractors of Am.* v. *City of Jacksonville*, 113 S. Ct. 2297, 2302 (1993)). The

court concluded that the second requirement—that the injury be fairly traceable to the alleged conduct of the defendant—was "not an issue in th[e] case." Pet. App. 6a.

The court held, however, that the relief requested by petitioner would not redress its asserted injury. Pet. App. 6a-7a. Specifically, the court concluded that "[a]n award of monetary damages to any aggrieved employees would do nothing to remedy the alleged failure of notice to [petitioner]." *Id.* at 7a. The court further found that petitioner's request for "'such other and further relief on its behalf and that of the aggrieved employees as may be proper,'" was "boiler-plate remedies language" that failed to "comport[] with the constitutional requirements of redressability." *Ibid.* (quoting Compl. ¶ 10c).

The court of appeals distinguished *International Union* v. *Hoosier Cardinal Corp.*, 383 U.S. 696 (1966), in which this Court found that a union had standing to recover monetary damages for union members in a suit under Section 301 of the Labor Management Relations Act, 29 U.S.C. 185. The court reasoned that "[t]he union had individual, direct standing [in *Hoosier Cardinal Corp.*] because its cause of action arose from a contract to which it was a party," while here, "[i]n contrast, the claims [petitioner] makes * * * are based on the WARN Act, rather than on a collective bargaining agreement." Pet. App. 7a n.5.

In addition, the court of appeals agreed with the district court that petitioner had not demonstrated associational standing on behalf of its members because it did not meet the third element of the *Hunt* test. Pet. App. 9a.[7] The court noted that petitioner did not seek de-

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[7] The court determined that the other two elements of the *Hunt* test were met. Section 2104(a)(5) of the WARN Act allows suits by

claratory or injunctive relief or damages for the union's own monetary loss, and that it did not have an assignment from its members of their monetary claims. *Id.* at 9a-10a. The court also observed that, in determining the appropriate back pay and benefits relief for any WARN Act violation, the district court would have to analyze each individual employee's circumstances and determine his or her date of termination, piecework pay rate, and medical expenses, in order to calculate damages. *Id.* at 10a. Because it believed that the relief petitioner sought would require the participation of each aggrieved union member, the court held that petitioner lacked associational standing. *Id.* at 11a.[8]

SUMMARY OF ARGUMENT

A. In order to establish direct standing to sue in federal court, a party must allege an injury to itself that is fairly traceable to the defendant's challenged conduct and is likely to be redressed by the relief sought. Petitioner's claim satisfies that standard.

The WARN Act imposes a legal duty on covered employers to notify unions of plant closings, and expressly authorizes suits by unions for breaches of that duty. The

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union members who are aggrieved employees, and those employees would be able to satisfy the Article III requirements of injury, causation and redressability. Thus, the court concluded, petitioner's members would have standing to sue in their own right. Pet. App. 8a. The court also found that the interest in obtaining WARN Act notice of a plant closure, and of redressing the loss of pay and benefits, suffered by the employees it represents, is "germane" to petitioner's purpose as the exclusive bargaining agent with respect to the employees' terms and conditions of employment with respondent. Pet. App. 9a.

[8] The court of appeals also held that the district court acted within its discretion in denying petitioner leave to amend its complaint. Pet. App. 12a; see note 6, *supra*. Petitioner did not seek review of that question in its petition for certiorari.

Act thereby affords unions a legal right, the invasion of which satisfies the requirement of personal injury. In enacting the WARN Act, moreover, Congress recognized the tangible harm to unions that unannounced plant closings cause, as well as the important role that properly notified unions play in worker retraining and readjustment efforts. An employer's failure to provide notice as required by the Act also impairs a union's role as exclusive bargaining representative under the federal labor laws, and damages the union's relationship with the employees it represents.

Petitioner's allegation that respondent failed to provide adequate notice of the closing of its Dixon plant clearly satisfies the requirement that the injury asserted be fairly traceable to the defendant's conduct.

The redressability requirement for standing is also satisfied. Just as Congress may exercise its legislative power to confer statutory rights, the invasion of which creates an injury within the meaning of Article III, it has authority to prescribe the remedies that will, in its judgment, appropriately redress the infringement of those rights. Here, Congress reasonably concluded that the injury to a union's role in the readjustment and collective bargaining processes that is caused by a WARN Act violation will be ameliorated by a remedy that improves the fiscal security of its members.

B. Another factor relevant to the standing inquiry is the extent to which a dispute is one traditionally thought to be capable of judicial resolution. Because unions have a pre-existing duty of fair representation toward members of their bargaining unit, permitting them to litigate on behalf of aggrieved employees is consistent with traditional forms of representational litigation, such as suits by trustees, guardians, or "next friends."

C. Petitioner's suit also satisfies the constitutional requirements for associational standing. Petitioner's members would have standing to sue in their own right, and the interests petitioner seeks to protect are germane to its statutory and organizational purposes. While the court of appeals found petitioner to lack associational standing because the relief it requested would require the participation of individual employees, we believe that the "individual participation" rule is a prudential consideration that may be displaced by Congress. The rule appears to derive from concerns about judicial management and litigation by third parties that this Court has held to be prudential rather than constitutional in nature. Moreover, the courts routinely entertain representative suits for damages to aggrieved individuals where Congress has authorized such litigation.

ARGUMENT

A UNION REPRESENTING EMPLOYEES AFFECTED BY A VIOLATION OF THE WARN ACT HAS STANDING TO SUE THE EMPLOYER TO RECOVER BACK PAY AND BENEFITS ON BEHALF OF THE EMPLOYEES

Article III of the Constitution limits the jurisdiction of the federal courts to "Cases" or "Controversies." This Court has defined that limitation through a number of principles, including the requirement of standing. The standing doctrine includes both constitutional and "prudential" elements. The constitutional elements are "an essential and unchanging part of the case-or-controversy requirement of Article III." *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 560 (1992). The prudential considerations, by contrast, are aspects of "judicial self-government," *ibid.*, by which "the judiciary seeks to avoid deciding questions of broad social import where no individual rights would be vindicated and to limit access

to the federal courts to those litigants best suited to assert a particular claim." *Gladstone, Realtors* v. *Village of Bellwood*, 441 U.S. 91, 99-100 (1979). Accordingly, where the requirements of Article III are satisfied, Congress may, by legislation, permit litigation by parties "who would otherwise be barred by prudential standing rules." *Warth* v. *Seldin*, 422 U.S. 490, 501 (1975).

In this case, there can be no question that Congress has expressly authorized a union in petitioner's position to sue. See 29 U.S.C. 2104(a)(5). By holding that petitioner nevertheless lacks standing to do so, the court of appeals effectively held unconstitutional an important feature of the WARN Act. "Judging the constitutionality of an Act of Congress is properly considered 'the gravest and most delicate duty that this Court is called upon to perform.'" *Walters* v. *National Ass'n of Radiation Survivors*, 473 U.S. 305, 319 (1985) (quoting *Rostker* v. *Goldberg*, 453 U.S. 57, 64 (1981)). Here, the court of appeals failed to give the deference owed to the judgment of Congress that a union is a proper party to vindicate the WARN Act rights of employees it represents.

A. Petitioner Has Standing In Its Own Right To Sue Respondent Under The WARN Act

In order to establish direct standing to sue in federal court, a party must allege (1) "personal injury" that is (2) "fairly traceable to the defendant's allegedly unlawful conduct" and (3) is "likely to be redressed by the requested relief." *Allen* v. *Wright*, 468 U.S. 737, 751 (1984). Petitioner has satisfied each of these requirements.

1. It is well established that "[t]he actual or threatened injury required by Art. III may exist solely by virtue of 'statutes creating legal rights, the invasion of which creates standing.'" *Warth* v. *Seldin*, 422 U.S. at 500 (quoting *Linda R.S.* v. *Richard D.*, 410 U.S. 614, 617 n.3

(1973)); see also *Havens Realty Corp.* v. *Coleman*, 455 U.S. 363, 373 (1982); *Trafficante* v. *Metropolitan Life Ins. Co.*, 409 U.S. 205, 208-212 (1972). "[N]oneconomic injuries," moreover, "may suffice to provide standing." *Gladstone, Realtors*, 441 U.S. at 112; see also *Sierra Club* v. *Morton*, 405 U.S. 727, 734-735 (1972). In this case, petitioner alleged in its complaint that respondent failed, in violation of Section 2102 of the WARN Act, to notify the union that it planned to close its Dixon plant and discharge 277 employees represented by petitioner. Pet. App. 6a; Compl. ¶ 7. That contention clearly alleged the "invasion of a legally protected interest" possessed by petitioner, *Northeastern Fla. Chapter of Associated Gen. Contractors* v. *City of Jacksonville*, 113 S. Ct. 2297, 2302 (1993), and satisfied the constitutional requirement of personal injury.

Section 2102 imposes a legal duty on covered employers to provide a union 60 days' notice of a plant closing or mass layoff. See *North Star Steel Co.* v. *Thomas*, 115 S. Ct. 1927, 1929 (1995). In so doing, the provision confers on unions a corresponding right to receive such notice at the time, and in the manner, required by the Act. The statutory right to notice created by the WARN Act, moreover, falls comfortably within the range of legal interests that this Court has recognized as sufficient to confer standing. In *Havens Realty*, for example, the Court considered the standing of various individuals and organizations to sue under Section 812(a)

of the Fair Housing Act of 1968, 42 U.S.C. 3612(a).[9] The Court concluded that, by making it unlawful under Section 804(d) for a party covered by the Fair Housing Act "[t]o represent [falsely] to any person because of race, color, religion, sex, handicap, familial status, or national origin that any dwelling is not available for inspection, sale, or rental," 42 U.S.C. 3604(d), and by making that prohibition enforceable through Section 812(a), "Congress has * * * conferred on all 'persons' a legal right to truthful information about available housing." *Havens Realty*, 455 U.S. at 373. Accordingly, the Court found that a "tester" plaintiff in *Havens Realty* who received false housing information from a real estate agent had standing to sue, notwithstanding the fact that "the tester may have approached the real estate agent fully expecting that he would receive false information, and without any intention of buying or renting a home." *Id.* at 374.[10]

The right to notice established by the WARN Act closely parallels the right to truthful housing information at issue in *Havens Realty*. There is no question, moreover, that petitioner "has suffered injury in pre-

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[9] Section 812(a) of the 1968 Act provides in pertinent part:

> The rights granted by sections 3603, 3604, and 3606 of this title may be enforced by civil actions in appropriate United States district courts without regard to the amount in controversy and in appropriate State or local courts of general jurisdiction.

42 U.S.C. 3612(a) (1982).

[10] In contrast, the Court held that a second tester, who did not receive false information, "ha[d] alleged no injury to his statutory right to accurate information concerning the availability of housing," *Havens Realty*, 455 U.S. at 375, and therefore lacked standing under the Fair Housing Act.

cisely the form the statute was intended to guard against." 455 U.S. at 373.

Nor is the injury petitioner asserts merely a "generalized grievance * * * common to all members of the public." *Lujan* v. *Defenders of Wildlife*, 504 U.S. at 575 (internal quotation marks omitted).[11] As Congress recognized when it passed the WARN Act, unions are directly affected by mass layoffs of their members, and they have an integral role to play in the coordination of retraining, financial assistance, and other services, before and after the displacement occurs. Cf. *International Union* v. *Brock*, 477 U.S. 274, 286 (1986) (by giving unions a role in the administration of the trade readjustment allowance benefit program, Congress "[r]ecogniz[ed] the interest of organized labor in obtaining benefits for its workers").

Congress viewed prior notice of plant closings as essential to successful worker readjustment programs.[12] See,

[11] This aspect of the holding in *Lujan* was limited to "suits against the Government." 504 U.S. at 578. Accordingly, it remains an open question what limits Article III imposes on Congress's ability to confer standing on members of the public to challenge in court the conduct of private parties. In any event, for the reasons we discuss herein, Congress's conferral of standing on the exclusive representative of employees aggrieved by mass layoffs does not approach the outer limits of congressional authority.

[12] Plant-closing provisions nearly identical to the WARN Act were initially passed by Congress in an omnibus trade bill, H.R. 3, 100th Cong., 1st Sess. (1987), that contained a worker adjustment program. The plant-closing notification provisions of that legislation were viewed as complementary to the worker adjustment program. See H.R. Conf. Rep. No. 576, 100th Cong., 2d Sess. 1045 (1988) ("the Conferees reaffirm that advance notice is an essential component of a successful worker readjustment program and * * * [that] the two Subtitles [pertaining to worker adjustment and plant closings] are closely related"). The trade bill was vetoed by President Reagan, largely because of the plant-closing provisions. 134 Cong. Rec. 12,130 (1988) (veto message). The trade bill was subsequently enacted without the plant-closing provisions. See Pub. L. No. 100-418, 102 Stat. 1107. Congress passed the WARN Act, which contains provisions nearly identical to the plant-closing provisions of H.R. 3, and the President permitted the law to take effect without his signature. There is thus a clear connection between plant notification provisions and worker adjustment programs. See 29 U.S.C. 2102(a)(2) (requiring employers to give notice of plant closing or mass layoff to state dislocated worker unit designated or created under the Job Training Partnership Act, 29 U.S.C. 1501 *et seq.*).

e.g., 134 Cong. Rec. 15,928 (Sen. Metzenbaum) ("[t]he important element in our bill is to see to it that people have the time to seek readjustment and retraining while they are working"); *id.* at 15,518 (1988) (Sen. Chafee) (WARN Act's notice provision was designed to permit "worker[s] and the community to prepare for the crisis, to respond to the need for job placement, retraining, education, financial assistance—all the demands that arise in these situations"). Accordingly, Congress sought to facilitate the beneficial role that unions play in the readjustment process when they receive adequate notice. See, *e.g.*, S. Rep. No. 62, 100th Cong., 1st Sess. 1045 (1987) ("A strong union role also generates trust and confidence in the workforce about the overall utility of the program."); 134 Cong. Rec. 15,514 (1988) (Sen. Byrd) ("every sector of the community—management, *labor*, local government, and other local businesses—must be given time to adjust to an unwanted and traumatic business situation") (emphasis added);[13] *ibid.* (Sen. Byrd)

[13] In addition to requiring notice to employee representatives and employees, the WARN Act requires employers to give notice of plant closings and mass layoffs to "the chief elected official of the unit of local government within which [the] closing or layoff is to occur," and to "the State dislocated worker unit (designated or created under title III of the Job Training Partnership Act [(JTPA)] [29 U.S.C. 1651

("[The WARN Act] makes sense because it breaks new ground in management-labor relations. * * * Management and labor must forge a new relationship if America is to compete against our foreign competition."); see also *Report of the Secretary of Labor's Task Force on Economic Adjustment and Worker Dislocation in a Competitive Society* 4 (Dec. 1986) (the *Brock Report*) ("the most effective and successful dislocated worker adjustment programs are those where the employer and workers (*and their unions if they are present*) are directly involved in the design and delivery") (emphasis added); see also S. Rep. No. 62, *supra*, at 1045 (quoting foregoing language from *Brock Report*).[14]

In addition, a central purpose of the employee-union relationship that is recognized and facilitated by the federal labor laws is the union's participation in collective bargaining negotiations on behalf of employees "in respect to rates of pay, wages, hours of employment, or other conditions of employment." 29 U.S.C. 159(a) (National Labor Relations Act); see *Brock*, 477 U.S. at 286. While an employer has no duty to bargain with its employees' union over its decision to terminate operations at a given facility, or to initiate a partial shutdown, *First National Maintenance Corp.* v. *NLRB*, 452 U.S. 666 (1981), it is required to bargain in good faith

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et seq.])." 29 U.S.C. 2102(a)(2). Employer notice to state dislocated worker units is a first step in the activation of employment and training programs for dislocated workers under the JTPA. 20 C.F.R. 639.1(a) and (f).

[14] Supporters of the WARN Act repeatedly cited the *Brock Report* as a source of empirical evidence of the beneficial effects of notice of plant closings. See, *e.g.*, 134 Cong. Rec. 15,518 (1988) (Sen. Gore); *id.* at 15,779 (Sen. Simon); *id.* at 15,782-15,784 (Sen. Riegle); S. Rep. No. 62, *supra*, at 9.

regarding the *effects* of such a decision. *Id.* at 681. Where a sudden, unannounced plant closing or layoff results in the termination of the employees that a union represents, that role is frustrated. See *Havens Realty*, 455 U.S. at 379 & nn.20, 21 (frustration of organizational function and activities sufficient to confer standing where statutory right is infringed).

2. As the court of appeals correctly observed (Pet. App. 6a), petitioner's claim clearly satisfies the requirement that the injury asserted be "fairly traceable to the defendant's allegedly unlawful conduct." *Allen*, 468 U.S. at 751. Respondent's failure to notify petitioner of the impending plant closing at the time, and in the manner, specified by the WARN Act resulted in a denial of petitioner's right to notice under the statute.

3. The redressability prerequisite for standing is also met in this case. Just as Congress may exercise its legislative power to confer statutory rights, the invasion of which creates an injury within the meaning of the Article III inquiry, it has authority to fashion remedies that will, in its judgment, appropriately redress the infringement of those rights. Indeed, where, as here, the legal interest asserted did not exist prior to Congress's intervention, the right and remedy in question are inextricably intertwined, and it is necessarily within Congress's power to create a remedial scheme that it deems likely to redress a statutorily based harm.[15] Where Congress expressly determines that a particular form of relief will suitably compensate for or rectify the infringement of a right it has created, the entertainment of suits

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[15] Cf. *Lujan* v. *Defenders of Wildlife*, 504 U.S. at 572 n.7 ("The person who has been accorded a procedural right to protect his concrete interests can assert that right without meeting all the normal standards for redressability and immediacy.").

for such relief under the designated statutory framework is in no way "inconsistent with the judicial function" under Article III. *Sierra Club*, 405 U.S. at 732 n.3; see *Muskrat* v. *United States*, 219 U.S. 346, 357 (1911) (cases and controversies refer to "the claims of litigants brought before the courts for determination by such regular proceedings as are established by law or custom for the protection or enforcement of rights, or the prevention, redress, or punishment of wrongs"; a case exists whenever a claim "takes such form as the judicial power is capable of acting upon it").

In this case, the court of appeals found an inadequate nexus between the right asserted and the remedy sought because, in its view, "[a]n award of monetary damages to any aggrieved employees would do nothing to remedy the alleged failure of notice to [petitioner]." Pet. App. 7a. Contrary to the court of appeals' assumption, however, the fact that the relief sought by petitioner will have the effect of benefiting third parties (aggrieved employees) does not lead to the conclusion that the relief will not *also* remedy the injury alleged by petitioner. See, *e.g.*, *Trafficante*, 409 U.S. at 208-212 (housing applicant's statutory right not to be denied housing based on race conferred on *current* residents a legal interest in living in a racially integrated community); *Lujan* v. *Defenders of Wildlife*, 504 U.S. at 578 (discussing *Trafficante*); cf. *Warth* v. *Seldin*, 422 U.S. at 501 (where Article III injury requirement is satisfied, "persons to whom Congress has granted a right of action * * * may have standing to seek relief on the basis of the legal rights and interests of others, and, indeed, may invoke the general public interest in support of their claim").

Here, moreover, the third parties who will benefit financially from the relief awarded by the court are not strangers to the dispute. The WARN Act's requirement

that notice be given to the union is ultimately for the benefit of the employees it represents, and as we have explained, a primary aspect of the injury to unions in petitioner's position is an impairment of their ability to aid aggrieved employees in obtaining retraining and placement in new positions. See, *e.g.*, 134 Cong. Rec. 15,514 (1988) (Sen. Byrd) ("[The WARN Act] allows the communities and the workers and management * * * the opportunity to put into place retraining programs while there is still time, *while the workers are still getting a paycheck*.") (emphasis added). The union's ability to recover for the employees the back pay and benefits owed by the employer under the Act serves to make up for the union's inability to furnish timely assistance to those employees, as a result of the employer's violation. The nature of the remedy in a case such as this thus is precisely tailored to the nature of the violation: the employer's failure to give notice *to* the union for the benefit of the employees gives rise to a suit *by* the union for the benefit of the employees. In short, it requires no leap of logic to conclude that ameliorating the devastating economic impact of unannounced layoffs on affected employees will also benefit the labor unions that serve them.

The remedial scheme prescribed by the WARN Act also has an important deterrent function that reinforces the reasonableness of the remedial scheme. Cf. *North Star Steel*, 115 S. Ct. at 1929 (referring to employer's liability for "penalties" under 29 U.S.C. 2104(a)(1)). The Act's relief provisions are designed in large part to discourage employers from disregarding the advance notice requirement. Cf. *Laborers Health & Welfare Trust Fund* v. *Advanced Lightweight Concrete Co.*, 484 U.S. 539, 547 (1988) ("Congress added [the Employee Retirement Income Security Act's] strict remedies to

give employers a strong incentive to honor their contractual obligations to contribute" to employee pension funds.). Indeed, Congress rejected an amendment to the bill that would have permitted employers to provide severance pay in lieu of prior notice.[16]

Back pay and benefits awards to affected employees serve to ameliorate the damage to the union's role in the collective bargaining and worker readjustment processes that results from a WARN Act violation. Unions directly benefit from the availability of monetary damages against noncomplying employers because the prospect of an award of damages, like an injunction, serves to deter violations, and thereby to safeguard the role of unions generally when plant closings and mass layoffs occur. And because the employees will have dispersed after the violation, the union often may be in the best position to effectuate the remedial and deterrent purposes of the Act by ensuring that the employer will not avoid its liability to some or all of the employees it injured.

4. Contrary to the court of appeals' conclusion (Pet. App. 7a-8a n.5), *International Union* v. *Hoosier Cardinal Corp.*, 383 U.S. 696 (1966), strongly supports union standing in this case. In *Hoosier Cardinal*, the Court held that a union had standing under Section 301(b) of the Labor Management Relations Act[17] to seek wages and

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[16] In opposing an amendment by Senator Quayle that would have permitted employers to comply with the Act by giving "severance pay in lieu of notice," 134 Cong. Rec. 15,926 (1988), Senator Metzenbaum, the Act's principal sponsor in the Senate, emphasized that "the bill is about giving notice. It is not a mandatory severance bill." *Id.* at 15,928.

[17] Section 301(b) provides in pertinent part that "[a]ny * * * labor organization may sue * * * in behalf of the employees whom it represents in the courts of the United States." 29 U.S.C. 185(b).

vacation pay on behalf of employees for the violation of a collective bargaining agreement to which the union was a party. 383 U.S. at 699-700. The court below sought to distinguish *Hoosier Cardinal* on the ground that there the union alleged the breach of a collective bargaining agreement, while here petitioner alleges a violation of an Act of Congress. Pet. App. 7a-8a n.5. In each case, however, the union relied on Congress's determination that it could sue for back pay in order to vindicate its representational interests. That the right asserted by the union in this case is statutory rather than contractual has no bearing on the question of Article III standing.[18]

Indeed, the right and remedy that arise from the WARN Act are comparable in significant respects to the operation of third-party-beneficiary contracts. Because the union's legal interest in both situations is in securing economic benefits for third parties (aggrieved employees), the remedy best tailored to redressing an infringement of the *union's* interest is payment by the employer to the employees of the amounts owed to them, whether under a contract entered into by the union or under a statute in which Congress has given the union a comparable role.[19]

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[18] Moreover, in *Hoosier Cardinal*, the contract the union sued to enforce was itself entered into pursuant to a statute (the NLRA) enacted by Congress to regulate the collective-bargaining process.

[19] See 2 Restatement (Second) of Contracts § 305, at 451-452 (1981):

> The promisee of a promise for the benefit of a beneficiary has the same right to performance as any other promisee, whether the promise is binding because part of a bargain, because of his reliance, or because of its formal characteristics. If the promisee has no economic interest in the performance, as in many cases involving gift promises, the ordinary remedy of damages for breach of contract is an inadequate remedy, since only nominal

B. Petitioner's WARN Act Claim is Consistent With Traditional Forms of Representational Litigation

Another consideration relevant to the standing inquiry is the extent to which the dispute at issue is one "traditionally thought to be capable of resolution through the judicial process." *Allen* v. *Wright*, 468 U.S. at 752 (quoting *Flast* v. *Cohen*, 392 U.S. 83, 97 (1968)); see also *Valley Forge Christian College* v. *Americans United For Separation of Church and State*, 454 U.S. 464, 472-473 (1982). A union's cause of action under the WARN Act is consistent with the many instances recognized in the law in which a party is authorized to represent the interests of another with whom it has a legally significant relationship. "Trustees, guardians, and personal representatives are familiar examples" of well accepted legal surrogates, 13 C. Wright, A. Miller & E. Cooper, *Federal Practice and Procedure* § 3531.9, at 627 (1984), as are persons authorized to sue as "next friend" of a third party. See *Whitmore* v. *Arkansas*, 495 U.S. 149, 161-162 (1990) (noting that "the concept of 'next friend' standing * * * has long been an accepted basis for jurisdiction in certain circumstances"). In each of those instances, courts allow one party to sue on another's behalf because the litigant has an independent duty to pursue the third party's interests arising from "some significant relationship" with that party. *Id.* at 164.

The statutory relationship between unions and the employees they represent fits well within the historical tradition of representational litigation. The WARN Act adopts its definition of "representative" from the National Labor Relations Act (NLRA), 29 U.S.C. 151 *et seq.* See 29 U.S.C. 2101(a)(4). Under the NLRA, unions are

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damages can be recovered. In such cases specific performance is commonly appropriate.

selected by employees within a collective bargaining unit through methods endorsed by Congress, see note 1, *supra*, and they are recognized by an administrative agency—the National Labor Relations Board—as the exclusive representatives of those employees in the collective bargaining process.

The NLRA imposes on a union a duty of fair representation to unit employees that this Court has described as "akin to the duty owed by other fiduciaries to their beneficiaries." *Air Line Pilots* v. *O'Neill*, 499 U.S. 65, 75 (1991). That duty includes "a statutory obligation to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct." *Vaca* v. *Sipes*, 386 U.S. 171, 177 (1967). The obligation is a continuing one and is not strictly limited to matters of contract administration. See, *e.g.*, *Breininger* v. *Sheet Metal Workers*, 493 U.S. 67, 87-89 (1989) (duty applies where union operates a hiring hall).

In light of that legislative background, Congress's designation of labor unions to represent employees' rights under the WARN Act is unremarkable. A union's independent duty to represent employees' interests in the work place makes it a particularly appropriate party to litigate those employees' rights in the context of unannounced layoffs or plant closings. Cf. *Hoosier Cardinal*, 383 U.S. at 700 ("[I]ndeed, the union's standing to vindicate employee rights under §301 [of the Labor Management Relations Act] implements no more than the established doctrine that the union's role in the collective bargaining process does not end with the making of the contract.").

C. Petitioner Has Associational Standing to Sue Respondent Under The Warn Act

For the reasons discussed above, petitioner has standing, both in its own right and in a statutorily conferred representational capacity, to challenge respondent's failure to provide notice under the WARN Act and to seek the statutory remedy of back pay and benefits for aggrieved employees. As we shall now explain, petitioner's suit also satisfies the requirements of Article III under the doctrine of associational standing.

"It has long been settled that '[e]ven in the absence of injury to itself, an association may have standing solely as the representative of its members.'" *Brock*, 477 U.S. at 281 (quoting *Warth* v. *Seldin*, 422 U.S. at 511). Although the invocation of associational standing "does not eliminate or attenuate the constitutional requirement of a case or controversy," *Warth* v. *Seldin*, 422 U.S. at 511, the Court has held that, "under certain circumstances, injury to an organization's members will satisfy Article III and allow that organization to litigate in federal court on their behalf." *Brock*, 477 U.S. at 281; see also *Hunt* v. *Washington State Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977); *Simon* v. *Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 40 (1976).

The Court has held that an association has standing to bring suit on behalf of its members when:

> (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.

Brock, 477 U.S. at 282. See also *Hunt*, 432 U.S. at 343; *Warth* v. *Seldin*, 422 U.S. at 511.

In this case, the first and second requirements are plainly satisfied. The aggrieved employees represented by petitioner were directly affected by respondent's allegedly deficient notice, and they would unquestionably benefit (in a manner contemplated by the Act) from a back pay award. See Pet. App. 8a. The interests the union seeks to protect through this litigation, moreover, are germane both to petitioner's role as an exclusive bargaining representative, and to its status as the intended recipient of plant-closing and layoff notification under the WARN Act. 29 U.S.C. 2102(a)(1). See Pet. App. 8a-9a. The decision to cease operations or lay off employees en masse "touches on a matter of central and pressing concern to the union and its member employees." *First National Maintenance*, 452 U.S. at 677.

The court of appeals concluded that the third requirement for associational standing was not met because, in its view, the back pay remedy authorized by the WARN Act would require the participation of individual employees in the lawsuit. Pet. App. 10a. In our view, however, the concern expressed in associational standing cases regarding the need for individualized proof is of prudential, rather than constitutional, dimensions. Any such impediment therefore is displaced in WARN Act suits by Congress's express authorization for a union to bring an action for damages.

The "individual participation" rule appears to derive from the concern that "[t]he courts depend on effective advocacy, and therefore should prefer to construe legal rights only when the most effective advocates of those rights are before them." *Singleton* v. *Wulff*, 428 U.S. 106, 114 (1976) (Blackmun, J.); see also *Holden* v. *Hardy*, 169 U.S. 366, 397 (1898) (assertion of third parties' rights would come with "greater cogency" from the third

parties themselves). The Court has stated repeatedly, however, that the "third-party standing" prohibition, which responds to that concern, is a prudential dictate. See, *e.g.*, *Valley Forge Christian College*, 454 U.S. at 474; *Gladstone, Realtors*, 441 U.S. at 99; *Duke Power Co.* v. *Carolina Environmental Study Group*, 438 U.S. 59, 80 (1978). Accordingly, the analogous rule concerning the possible need for individual participation in a suit brought by an association is similarly prudential in nature and is not a barrier when a statute such as the WARN Act expressly authorizes an organization to recover a money judgment for the benefit of aggrieved individuals.

In addition, the "individual participation" rule's focus on the form—as opposed to the substance—of a plaintiff's proof implicates judicial management concerns characteristic of prudential standing requirements. See *Warth* v. *Seldin*, 422 U.S. 515 (noting potential difficulties of administering monetary relief to aggrieved individuals in an associational suit); see also 13 C. Wright, A. Miller & E. Cooper, *Federal Practice and Procedure* § 3531.9, at 621 (1984) (suggesting that the individual participation rule may be based on the "significant burden [that] might be entailed by the need [for the court] to supervise distribution of any recovery from the organization to its injured members"). While the pragmatic issues surrounding the litigation of claims for individualized relief are clearly relevant to judicial self-governance, they do not diminish "that concrete adverseness" on which Article III standing depends. *Brock*, 477 U.S. at 289 (quoting *Baker* v. *Carr*, 369 U.S. 186, 204 (1962)).

The courts frequently entertain representative litigation under back pay statutes created by Congress. For example, in litigation under the Fair Labor Standards Act, 29 U.S.C. 201 *et seq.*, courts commonly permit the testimony of a few representative employees in order to

provide a basis for establishing back pay awards for all affected employees. See generally *Anderson* v. *Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946). More generally, class actions brought pursuant to Rule 23 of the Federal Rules of Civil Procedure are not limited to suits for declaratory or injunctive relief. Rather, named plaintiffs in such suits may litigate the case on behalf of the class, irrespective of whether individual class members must ultimately testify as to questions of liability or relief.[20] See, *e.g.*, Barbara L. Schlei & Paul Grossman, *Employment Discrimination Law* 1322 & 1454 (2d ed. 1983) (describing litigation of class-wide disparate treatment claims under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*). While this Court has not expressly passed on the adequacy of such litigation schemes under Article III, their prevalence in the modern legal landescape strongly suggests that they are within Congress's authority to create.

Similarly, a number of federal statutes expressly authorize federal officials or agencies to sue in federal court in order to recover monetary relief for aggrieved individuals. For example, in *General Telephone Co.* v. *Equal Employment Opportunity Commission*, 446 U.S. 318 (1980), the Court held that Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-5(f)(1), authorizes the EEOC to seek back pay relief on behalf of "those persons adversely affected" by unlawful employment discrimination "in an amount to be proved at trial." 446 U.S. at 324; see also Black Lung Benefits Act (BLBA), 30

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[20] Class actions differ in significant respects from suits premised on associational standing. In both categories of cases, however, a representative may establish unlawful conduct and seek relief on behalf of third parties in a proceeding in which individualized proof is required.

U.S.C. 932(k) ("The Secretary shall be a party in any proceeding relative to [a] claim for benefits."); Fair Labor Standards Act, 29 U.S.C. 216 (authorizing Secretary of Labor to bring actions "to recover the amount of unpaid minimum wages or overtime compensation and an equal amount as liquidated damages").

In *Director, Office of Workers' Compensation Programs* v. *Newport News Shipbuilding & Dry Dock Co.*, 115 S. Ct. 1278, 1286 (1995), the Court considered whether the Longshore and Harbor Workers' Compensation Act (LHWCA), 33 U.S.C. 901 *et seq.*, confers standing on the Director of the Office of Workers' Compensation Programs in the Department of Labor to seek judicial review of the denial of disability benefits to individuals by the Benefits Review Board. The Court held that the Director did not fall within the definition of "person[s] adversely affected or aggrieved" by the Board's decision, to whom the statute granted a right to judicial review. 33 U.S.C. 921(c). The Court observed, however, that Congress has the constitutional authority to confer such standing on federal officials when it chooses to do so. Relying on its decisions in *General Telephone Co.*, *supra*, and *Pasadena City Bd. of Educ.* v. *Spangler*, 427 U.S. 424 (1976), the Court concluded in *Newport News* that "[t]hose two cases certainly establish that Congress *could* have conferred standing upon the Director without infringing Article III of the Constitution; but they do not at all establish that Congress did so." 115 S. Ct. at 1286.

In light of the separation of powers concerns that underlie the doctrine of standing, see *Lujan* v. *Defenders of Wildlife*, 504 U.S. at 560, and because the federal government represents the public interest in litigation to which it is a party, standing principles applicable to federal officials and agencies may not be entirely transferable to suits between private parties. Nonetheless, the Court's recognition of the appropriateness of entertaining suits brought by the government for individualized relief that benefits aggrieved third parties strongly supports the conclusion that the individual participation aspect of associational standing doctrine in private litigation is prudential in nature.

Finally, the relationship between a union and the individual employees it represents makes the former an appropriate party to assert the latter's interests in obtaining monetary relief under the WARN Act. As previously noted, the federal labor laws impose on unions a duty of fair representation. See generally *Vaca* v. *Sipes*, *supra*; see also *Hoosier Cardinal*, 383 U.S. at 700. Unions, moreover, bring to WARN Act litigation "a preexisting reservoir of expertise and capital," as well as "specialized expertise and research resources relating to the subject matter of the lawsuit" that individual plaintiffs—here, unemployed workers—often lack. *Brock*, 477 U.S. at 286 (internal quotation marks omitted).[21] Where, as here, Congress has expressly designated a party as a proper guardian of the rights of its members before the courts, Article III does not require that that choice be rejected.

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[21] As the Court recognized in *Brock*, 477 U.S. at 290, there may be cases in which an organization asserting associational standing will be unable to represent adequately the interests of all of its injured members. In such cases, the Court observed, "a judgment won against [the association] might not preclude subsequent claims by the association's members without offending due process principles." *Ibid.* In the present case, however, there is no indication that the union will not adequately represent the legal interests of aggrieved employees.

CONCLUSION

The judgment of the court of appeals should be reversed, and the case should be remanded for proceedings on the merits of petitioner's claims.

Respectfully submitted.

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